

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
DAVID M. GLOVER, JUDGE

DIVISION IV

CACR07-276

February 6, 2008

LAVELL EVANS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE UNION  
COUNTY CIRCUIT COURT,  
[CR2005-0226-1]

HONORABLE HAMILTON H.  
SINGLETON, CIRCUIT JUDGE

AFFIRMED

Appellant, Lavell Evans, was convicted by a Union County jury of the offenses of possession of a controlled substance (methamphetamine) with intent to deliver, possession of a firearm by certain persons as a habitual offender, simultaneous possession of drugs and firearms, maintaining a drug premise as a habitual offender, and possession of a controlled substance (marijuana) with intent to deliver. He was sentenced to a total of eighty years in the Arkansas Department of Correction and fined a total of \$10,000. Evans's sole point on appeal is that the trial court erred in not granting his motion for directed verdict based upon the lack of corroboration of an accomplice's testimony. We affirm.

At trial, the State presented evidence that on February 21, 2005, two Union County Sheriff Department deputies went to the residence of Johnny and Felicia Evans on Nevada Street in El Dorado to speak with Felicia about a case. When they knocked on the door, a shirtless black male with an “E” tattooed on his chest, who was later identified as appellant, cracked the door; told the officers that he was Jay Moore; and after the officers asked if Felicia was there and he said “no,” slammed the door in the officers’ faces and locked it. Officers’ testimony indicated that the man was “irate and nervous acting,” and that after the door was slammed and locked, there was a noise on the opposite side of the house that sounded like breaking glass. One of the officers went around the side of the house, where he found the window raised and the screen hanging off and still swinging. When the officer looked into the window, he noticed a pistol with an extended clip on the floor in what appeared to be a bedroom. Appellant was soon apprehended at another location in El Dorado when he attempted to flee from a vehicle in which he was a passenger following a police traffic stop.

Based upon the gun seen in the floor through the window and the fact that both the Evans brothers were convicted felons, a search warrant was issued for the residence. In the northeast bedroom of the house, which was determined to be Felicia and Johnny Evans’s bedroom from the papers found in it, police found a plastic baggie containing numerous smaller baggies of suspected crystal methamphetamine; a set of digital scales; a bank statement; the gun seen from the window, a 9 mm semi-automatic Berretta with an

illegal clip; and a semi-automatic AK SKS assault weapon with a thirty-round clip. The northeast bedroom window was the one that appellant had used to exit the house.

In the southeast bedroom, which was occupied by Crystal Jenkins, Felicia's sister, \$4350 in cash and some bank statements were found, along with a briefcase-type tote bag containing a large amount of marijuana; a .32 caliber semi-automatic Kel-Tec pistol with hollow point hydrashot ammunition; another set of digital scales; a large quantity of pills; \$160; a small bag of marijuana; a crystal substance; and drug paraphernalia, including pipes, scales, roach clips, and scissors. Additional items found in this bedroom were a red tote bag containing baggies of smaller baggies of suspected crystal methamphetamine and three bags of suspected marijuana that contained prepackaged smaller bags, or "dime bags." In this bedroom there were also found some parole papers dated July 2004 bearing the signature of Lavell Evans, as well as a diploma for Crystal Jenkins.

It was determined that appellant's name was not on the lease and that none of the utilities were in his name, but his luggage and a laptop bag belonging to him were in the living room at the time of the search. Although there was \$900 in one-hundred-dollar bills in the laptop bag, no gun or drugs were in the bags, and no clothes belonging to appellant were found in either bedroom. However, appellant's wallet, containing his social security card, his Texas offender's card, and his library card, was also found in the living room.

A forensic drug chemist from the Arkansas State Crime Laboratory tested the drugs found and concluded that there were 3.4652 grams of methamphetamine; 27.404

grams of methamphetamine/dimethylsulfone; a tablet of MDMA or ecstasy; 349 tablets of alprazolam or Xanax; 3.0164 grams of methamphetamine; and representative samples of green vegetable material that were marijuana.

Officers also searched the residence located at 2618 North College in El Dorado because appellant and his mother lived at that address, or at least that was appellant's address given as his residence for the purpose of his federal parole. At that residence, in appellant's bedroom, officers found a receipt from the Best Western in Nevada, California, which showed that appellant arrived on February 14, 2005, and departed on February 16, 2005. Officers also found a handwritten document of parole visits.

State witness Jennifer Sullivan David testified that she knew appellant through her sister-in-law's sisters, Felicia Evans and Crystal Jenkins. David said that appellant was at Felicia's house on Nevada Street on a regular monthly basis; that there was another house where Crystal and Johnny sold drugs; and that appellant was the supplier. She testified that she had observed appellant and Johnny Evans bring three garbage bags of marijuana into the house about three months prior to the February 26, 2005 search. She also testified that she had seen appellant during this same time frame with a handgun in the waistband of his pants, and that the gun appeared to be similar to the 9mm Berretta seized during the execution of the search warrant, although she could not say for sure that it was the same gun. David said that appellant and Johnny Evans were in California on Valentine's Day; that while they were gone some guys came to the Nevada Street house

wanting to sell a gun; and that Crystal had taken pictures of the gun with her cell phone and sent them to appellant.

Felicia Evans, appellant's sister-in-law and co-defendant who testified against him at his trial, said that she began buying marijuana from appellant in middle school and that she married appellant's brother Johnny in 2004. Felicia testified that she, Johnny, and her sister Crystal had lived together on Murphy Street, and that appellant was in that house every week and spent the night there several times. She said that there was a sexual relationship between appellant and Crystal, and that all four of them were involved in drugs. Felicia said that they would go to Dallas and get marijuana, and that it was appellant who was getting it for them. Felicia said that she, Johnny, and Crystal were selling the drugs, but that she never saw appellant selling drugs out of the Murphy Street house.

Felicia said that they moved to the Nevada Street house in November 2004; that the house was rented in hers and Johnny's names; that she, Johnny, and Crystal paid the rent by selling drugs; and that appellant supplied them with marijuana and crystal methamphetamine. Felicia said that appellant was at their house every week, and that he would spend the night at least once a week. She said that they would go to appellant's house in Dallas every other week to get marijuana; appellant and Johnny would leave and then come back with the marijuana packed in the car.

Felicia testified that Johnny and appellant went to California to get methamphetamine right before Valentine's Day 2005; that she and Crystal drove Johnny

halfway to Dallas to meet appellant; and that appellant and Johnny went to California and bought methamphetamine, packaged it in candles, and mailed it back to Arkansas. Felicia recounted that she went to Johnny's grandparents' house and got the package, and that she took it home and waited for Johnny and appellant to return. When Johnny and appellant returned, they broke open the candles, and the methamphetamine was inside the candles. Felicia said that they sold some of the methamphetamine from the candles prior to being "busted" on February 21, but that some of the candles were not broken open and still contained methamphetamine when the search warrant was issued; she said that they sent someone to get the unopened candles after the search warrant was executed. Felicia said that on the day of the search, appellant had been at her house all day, that he was on the computer when she left, and that he and Johnny were supposed to go that night and get more marijuana. Felicia testified that she was not aware of appellant having any type of gainful employment outside the drug business.

After the close of the State's case, appellant's counsel moved for a directed verdict on all charges, arguing that the State failed to offer sufficient evidence to corroborate Felicia's accomplice testimony. The State argued that appellant fled from the premises through a window after the officers knocked on the door and asked for Felicia; that his personal identification was found in the house; that his luggage was at the house; that his computer with \$900 was in the house; that his parole papers were found in one of the bedrooms from which drugs were seized; that appellant had gone to California; and that

he was more than a guest in the house as he was left alone in the house. The trial court found sufficient corroboration and denied the motions for directed verdict.

In his defense, appellant had witnesses who testified that the Nevada Street house was not rented in his name; that the utilities were not in his name; and that he worked for a temporary agency in Dallas. Others testified that appellant was living in Dallas on February 21, 2005. His fiancée also testified and said that appellant had spent the night of February 20 with her and had taken her to work on February 21 a little after 4:00 p.m. She also testified that appellant was in Texas on Valentine's Day, and that it was not possible for him to have been in California at that time. At the close of all the evidence, appellant renewed his motions for directed verdict, which were again denied by the trial court.

Motions for directed verdict are treated as challenges to the sufficiency of the evidence. *Martin v. State*, 346 Ark. 198, 57 S.W.3d 136 (2001). When reviewing the sufficiency of the evidence, the appellate court determines whether there is substantial evidence to support the verdict, and the evidence is viewed in the light most favorable to the State. *Id.* Furthermore,

[A] person cannot be convicted of a felony based upon the testimony of an accomplice, unless that testimony is "corroborated by other evidence tending to connect the defendant with the commission of the offense." Corroboration is not sufficient if it merely establishes that the offense was committed and the circumstances thereof. It must be evidence of a substantive nature since it must be directed toward proving the connection of the accused with the crime and not directed toward corroborating the accomplice's testimony. The test for determining the sufficiency of the corroborating evidence is whether, if the testimony of the accomplice were totally eliminated from the case, the other evidence

independently establishes the crime and tends to connect the accused with its commission.

Circumstantial evidence may be used to support accomplice testimony, but it, too, must be substantial. Corroborating evidence need not, however, be so substantial in and of itself to sustain a conviction. Where circumstantial evidence is used to support accomplice testimony, all facts of evidence can be considered to constitute a chain sufficient to present a question for resolution by the jury as to the adequacy of the corroboration, and the court will not look to see whether every other reasonable hypothesis but that of guilt has been excluded.

*Martin*, 346 Ark. at 202-03, 57 S.W.3d at 139-40 (citations omitted). Corroborating evidence need only “tend in some degree to connect the defendant with the commission of the crime.” *Tate v. State*, 357 Ark. 369, 374-75, 167 S.W.3d 655, 658 (2004).

We hold that there was sufficient corroboration of Felicia’s accomplice testimony to affirm appellant’s convictions. Appellant’s brother rented the house where the drugs and drug paraphernalia were found; Jennifer David testified that appellant was at that house on a regular basis, that she saw him carrying garbage bags of marijuana into the house within three months of the search, and that she also saw him with a gun that looked like the 9mm Berretta found in the house; appellant’s wallet, luggage, and laptop were in the living room; appellant’s parole papers were in the bedroom closet where some of the drugs were found; and appellant was left alone in the house with money, firearms, and a large amount of drugs. Additionally, the receipt for the Best Western in California found in appellant’s bedroom at his mother’s house matched the dates on which Felicia said Johnny and appellant went to California to pick up the methamphetamine. Furthermore, when the officers knocked on the door of Felicia’s house, appellant gave them a false



name, jumped out of the window, and ran. This can be considered by a jury as evidence corroborating accomplice testimony. *Martin, supra*.

Affirmed.

BIRD and VAUGHT, JJ., agree.